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असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-Section (ii)

प्राधिकार से प्रकाशित  
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गृह मंत्रालय  
अधिसूचना

नई दिल्ली, 12 अप्रैल, 1994

का.आ. 309(अ) :—केन्द्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए जमात-ए-इस्लामी हिन्द को (जिसे इसमें इसके पश्चात् जे.ई.आई.एच. कहा गया) भारत सरकार के गृह मंत्रालय की अधिसूचना सं.का.आ. 898(अ), तारीख 10 दिसम्बर, 1992 द्वारा एक विधिविरुद्ध संगम घोषित किया था;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं.का.आ. 925(अ), तारीख 24 दिसम्बर, 1992 द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश, न्यायमूर्ति श्री पी.एन. नाग थे;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 5 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं.का.आ. 247(अ), तारीख 24 मार्च, 1994 द्वारा न्यायमूर्ति श्री पी.एन. नाग के त्यागपत्र से हुई रिक्ति को भरने के लिए इलाहाबाद उच्च न्यायालय के न्यायाधीश, न्यायमूर्ति श्री बी.एम. लाल की नियुक्ति की थी;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन जारी की गई अधिसूचना सं.का.आ. 898(अ), तारीख 10 दिसम्बर, 1992 इस बात के न्यायनिर्णयन के प्रयोजन के लिए उक्त अधिकरण को तारीख 8 जनवरी, 1993 को निर्देशित की थी कि क्या उक्त संगम को विधिविरुद्ध घोषित करने के पर्याप्त कारण थे या नहीं;

और उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, तारीख 11 अप्रैल, 1994 को एक आदेश किया था, जिसमें

अधिसूचना सं.का.आ. 898(अ), तारीख 10 दिसम्बर, 1992 द्वारा की गई घोषणा की गृष्टि की गई थी;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त आदेश को प्रकाशित करती है।

[फा.सं. II-14015/1/94-आई.एस. (डी-V)]

टी.एन. श्रीवास्तव, संयुक्त सचिव

#### MINISTRY OF HOME AFFAIRS

#### NOTIFICATION

New Delhi, the 12th April, 1994

S. O. 309(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared the Jamaat-e-Islami Hind (hereinafter referred to as JEIH) as unlawful association vide notification of the Government of India in the Ministry of Home Affairs, No. S.O. 898(E), dated the 10th December, 1992;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted the Unlawful Activities (Prevention) Tribunal, consisting of Justice Shri P. N. Nag, Judge of the Delhi High Court, vide notification of the Government of India in the Ministry of Home Affairs, No. S.O. 925(E) dated the 24th December, 1992;

And whereas the Central Government in exercise of the powers conferred by sub-section (2) of section 5 of the said Act appointed Justice Shri B. M. Lal, Judge of the Allahabad High Court of till the vacancy caused by the resignation of Justice Shri P. N. Nag, vide notification of the Government of India in the Ministry of Home Affairs, No. S. O. 247(E) dated the 24th March, 1994;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, referred notification No. S.O. 898 (E), dated the 10th December, 1992 issued under sub-section (1) of section 3 of the said Act to the said Tribunal on the 8th January, 1993, for the purpose of adjudication whether or not there was sufficient cause for declaring the said association as unlawful;

And whereas the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act made an order on the 11th April, 1994 confirming the declaration made vide notification No. S.O. 898(E), dated the 10th December, 1992;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said order.

[F. No. II-14015/1/94-IS(DV)]  
T. N. SRIVASTAVA, Jt. Secy.

#### THE UNLAWFUL ACTIVITIES (PREVENTION)

#### TRIBUNAL, NEW DELHI

#### ENQUIRY

#### IN THE MATTER OF JAMMAT-E-ISLAMI-HIND, NEW DELHI

By

HON'BLE MR. JUSTICE B. M. LAL

CHAIRMAN

Counsel for the Union of India:—

Shri P. P. Malhotra Senior Advocate (S.C.).

Shri Arun Malhotra Advocate.

Counsel for JEIH:—

Shri Soli J. Sorabji Senior Advocate (S.C.).

Sri Raju Ramchandran Advocate.

Sri K. K. Lahri Advocate.

Sri Ejaz Maqbool, Advocate.

Sri Aradhana Kumar Advocate.

Sri K. A. Ansari Advocate.

Sri R. M. Tuffail Advocate.

#### THE UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL, NEW DELHI

#### IN THE MATTER OF

#### JAMMAT-E-ISLAMI-HIND, NEW DELHI

DELIVERED BY HON'BLE MR. JUSTICE B. M. LAL,  
CHAIRMAN

#### ORDER

Central Government of India in exercise of powers conferred by sub section (1) of Section 3 of the Unlawful Activities (Prevention) Act 1967 (37 of 1967) (hereinafter referred to as the Act) declared the "JAMMAT E-ISLAMI HIND" (for short JEIH) to be an Unlawful Association vide Notification No. 898(E) dated 10-12-1992 which was duly published in extraordinary Gazette of India on 10-12-1992.

Further the Central Government in exercise of powers conferred by sub section (1) of Section 5 of the Act constituted Unlawful Activities (Prevention) Tribunal vide Notification No. S.O. 925(E) dated 24th December, 1992 and appointed Hon'ble Mr. Justice P. N. Nag, a sitting Judge of Delhi High Court as Chairman of the Tribunal.

Hon'ble Mr. Justice P. N. Nag conducted the proceedings of the Tribunal as Chairman till 20-3-94 and after affording the parties ample opportunity to lead evidence and after taking their evidence on record he closed the evidence and submitted his resignation on 21-3-94.

Consequent upon the resignation of Hon'ble Mr. Justice P. N. Nag from the Tribunal, the Central Government in exercise of the powers conferred by sub-section (2) of Section 5 of the Act, vide Notification No. S.O. 247 (E) dated 24-3-1994 appointed me (Justice B. M. Lal of Allahabad High Court) as Chairman of the Tribunal. Thus I resumed the office of the Tribunal.

The Central Government in exercise of powers conferred by sub-section (3) of Section 3 of the Act gave immediate effect to aforesaid notification dated 10-12-1992 declaring JEIH to be an unlawful association.

This exercise of powers by the Central Government under the proviso to sub-section (3) of Section 3 of the Act was challenged before the Supreme Court of India by means of writ petition No. 40 of 1993 (Mohammad Jafar Vs. Union of India) and Civil Appeal No. 1736 of 1993 (Ahmad Ali Akhtar and another Vs. Union of India).

The apex Court in writ petition No. 40 of 1993 passed interim stay order on 14-5-1993, relevant portion of which runs as under :

"We are satisfied that the Tribunal should be permitted to continue with the enquiry in these cases but the final order should not be made by the tribunal until further orders, during the pendency of this writ petition. We direct accordingly. The period prescribed by the Statute for completion of the enquiry by the Tribunal will stand extended accordingly."

Ultimately the Apex Court by order dated 18-3-1994 disposed of aforesaid writ petition and civil appeal finally. The operative portion of the order runs as under :

Accordingly the part of the notification viz, "and directs, in exercise of the powers conferred by the proviso to sub section (3) of that section that the notification shall have effect from the date of its publication in the official Gazette is bad in law and is struck down. We express no opinion on the validity of the rest of the notification which is the subject matter of adjudication before the Tribunal"

Thus the subject matter of adjudication before this Tribunal is whether the Central Government in exercise of the powers conferred by sub section (1) of Section 3 of the Act was justified in declaring the JEIH as an "unlawful association" on the grounds specified in the Notification No. S. O. 898 (E) dated 10th December 1992 and that sufficient cause has been shown by the Central Government for declaring the JEIH as an unlawful association.

In exercise of the powers conferred by sub section (1) of Section 3 of the Act, vide Ministry of Home Affairs Notification No. S. O. 898 (E) dated 10th December 1992 published in the Gazette of India Extraordinary Part II, the Central Government has declared the JEIH to be an unlawful association and directed in exercise of powers conferred by the proviso to sub section (3) of that section that the Notification shall, subject to any order that may be made under Section 4 of the Act. The grounds for declaring JEIH as unlawful association have been stated in the Notification itself which is reproduced below :

"Whereas Shri Sirajul Hasan Amir of the Jamaat-e-Islami Hind (hereinafter referred to as JAIH) declared in a meeting at Delhi held on the 27th May, 1990 that the separation of Kashmir from India was inevitable :

And whereas Shri Abdul Aziz Naib Amir of JEIH addressing a meeting at Malerkotla on the 1st August, 1991, observed that the Government of India should hold plebiscite on Kashmir ;

And whereas JEIH has been disclaiming and questioning the sovereignty and territorial integrity of India ;

And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts, and materials in its possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the JEIH is an unlawful association ;

Now therefore in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Jamaat-e-Islami Hind to be an unlawful association and directs in exercise of the powers conferred by the proviso to sub-section (3) of that section that this notification shall subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the official Gazette"

As stated above in exercise of the powers conferred by sub-section (1) of Section 5 of the Act the Central Government being of opinion that it is necessary so to do constituted this Tribunal and the Joint Secretary to the Government of India vide letter No. 11/14034/2/92 JS(DV), dated 8-1-1993 addressed to the Registrar of the Tribunal, enclosed a copy of the Government of India, Ministry of Home Affairs aforesaid Notification No. S. O. 898(E), dated 10th December, 1992 published in the Gazette of India Extraordinary on the 10th December, 1992 declaring the JEIH as an unlawful association under sub-section (1) of the Act for placing it before the Tribunal for the purpose of adjudicating in accordance with Section 4 of the Act. A resume regarding the aims, objectives and activities of the said organisation as required under Rule 4 of the Unlawful Activities (Prevention) Rules, 1968 (hereinafter referred to as the Rules) was also enclosed with the aforesaid letter of 8-1-1993.

The Tribunal heard the matter on 12th January, 1993 and ordered for issuance of notice to the JEIH and its officers mentioned in the order to show cause as to why the

declaration made by the Government of India in aforesaid notification dated 10th December, 1992 be not confirmed and the association declared as unlawful.

The show cause notices issued by the Tribunal were made returnable on 24th February, 1993. The notices were sent through registered post as well as were published in Hindustan Times (English daily news) dated 23-1-1993 and 'Pratap' (Urdu daily) dated 23-1-1993. The notices were also served on JEIH and its office bearers through media i.e. Radio and Television. In addition to above the notices were also served by affixation on conspicuous part of the office of the Association.

Pursuant to the service of aforesaid show cause notice the JEIH put in appearance before the Tribunal. The JEIH is represented through Shri Soli J. Sorabji senior advocate Supreme Court, Shri K. K. Lahri, Shri Ejaz Maqbool, Mr. Aradhana Kumar, Shri K. A. Ansari, and Shri R. M. Tuffail advocates. The Union of India is represented through Shri P. P. Malhotra senior advocate Supreme Court and Shri Arun Malhotra advocate.

Replies rejoinders and sub rejoinders have been filed by the parties after serving copies of the same on each other.

Having heard learned counsel for the parties, Tribunal considered it appropriate that the evidence should be produced by the parties by way of affidavit consequently vide order dated 26-3-1993 it was directed that it would be appropriate if the evidence is produced by way of affidavit. Union of India and JEIH filed affidavits by way of evidence, examined and cross examined witnesses of each other.

Before proceeding to consider the evidence led by respective parties it may be necessary to refer to the objects and reasons of the Act with certain relevant provisions of the Act :

"Pursuant to the acceptance by Government of India a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixth Amendment) Act, 1963, was enacted empowering parliament to impose, by law reasonable restrictions in the interest of the sovereignty and integrity of India, on the :—

- (i) freedom of speech and expression ;
- (ii) right to assemble peaceably and without arms ; and
- (iii) right to form associations or unions."

"It was an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith."

Relevant provisions of the Act read as under :

"2. Definitions.—In this Act unless the context otherwise requires—

- (a) 'association' means any combination or body of individuals;
- (b) 'cession' of a part of the territory of India includes 'admission' of the claim of any foreign country to any such part;
- (c) 'prescribed' means prescribed by rules made under this Act;
- (d) 'cession' of a part of the territory of India from the Union includes the assertion of any claim to determine whether such part will remain a part of the territory of India;
- (e) Tribunal means the Tribunal constituted under Section 5;
- (f) 'unlawful activity' in relation to an individual or association means any action taken by such individual or association (whether by committing



an act or by words either spoken or written or by signs or by visible representation or otherwise—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever the cession of a part of the territory of India or the cession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession;
- (ii) which disclaims questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;
- (g) unlawful association means any association—
  - (i) which has for its object any unlawful activity, or of which the members undertake activity, or
  - (ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity;

Provided that nothing contained in sub-section (ii) shall apply to the State of Jammu and Kashmir."

### "3. Declaration of an association as unlawful:

- (1) If the Central Government is of opinion that any association is or has become an unlawful association it may by notification in the Official Gazette declare such association to be unlawful;
- (2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary;

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

- (3) No such notification shall have effect until the Tribunal has by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette.

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect it may, for reasons to be stated in writing direct that the notification shall subject to any order that may be made under section 4 have effect from the date of its publication in the Official Gazette."

### "4. Reference to Tribunal (1)—Where any association has been declared unlawful by a notification issued under sub-section (1) of Section 3 the Central Government shall within thirty days from the date of the publication of the notification under the said sub-section refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful:

- (2) On receipt of a reference under sub-section (1) the Tribunal shall call upon the association affected by notice in writing to show cause within thirty days from the date of the service of such notice, why the association should not be declared unlawful."

For determination and adjudication as to whether or not there is sufficient cause for declaring the JEIH an unlawful association it is relevant to examine what unlawful association means and whether there was enough and adequate material before the Central Government as was required for the purpose.

As stated above, Section 2(g) of the Act defines 'unlawful association', according to which it means any association (i) which has for its object any lawful activity or which encourages or aids persons to undertake any unlawful activity or of which the members undertake such activity or which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity. Section 153-A of the Indian Penal Code deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony. Section 153-B deals with making of imputations, assertions prejudicial to national integration. The unlawful activity as defined in clause (f) of Section 2 in relation to an individual or association is comprehensive enough to include all activities of an individual or an association which are intended or support any claim to bring about on any ground whatsoever the cession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. Any association or individual will be unlawful if its activities are aimed at and directed with the object of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and/or making of imputations, assertions prejudicial to national integration and which had the result and effect of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and making of imputations, assertions prejudicial to national integration threatening the sovereignty and territorial integrity of India.

The Central Government as already referred to has made the aforementioned declaration after having examined the material in their possession. The question that arises for consideration before the Tribunal is whether the opinion has been formed by the Central Government that the JEIH is an unlawful association is justified in the facts and circumstances of the case and whether there is sufficient and adequate material as may be necessary to answer the purpose intended on the basis of which such an association can be declared unlawful. The purpose and object intended and sought to be achieved are to preserve sovereignty and territorial integrity of India and to curbe out any unlawful activity which can result and can have effect of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and/or making of imputations, assertions prejudicial to national integration.

The Preamble of Constitution of India shows that the People of India have constituted into a sovereign democratic republic. According to Article 1 of the Constitution, India shall be union of States. No State has right to secession from the Union.

The Unlawful Activities (Prevention) Act 1967 is intended to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.

Before dealing with the enquiry and considering the evidence led by the parties and arguments advanced by the learned counsel for the parties on merits, it appears just and proper to deal with the preliminary objections raised by Mr. Soli J. Sorabji learned senior counsel for the JEIH.

Mr. Soli J. Sorabji, learned senior counsel appearing on behalf of JEIH raised three preliminary objections. The first preliminary objection was that the Union of India by resume has tried to introduce matters which are not contained in the Notification dated 10th December 1992 and has further tried to extend the scope and ambit of the said Notification which is not permissible under law. In support of this preliminary objection besides other decisions he relied upon Mohinder Singh Gill and another Vs. The Chief Election Commissioner New Delhi (AIR 1978 SC 851) para 8 according to which the validity of the order must be indeed by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

In this context it may be observed here that the Tribunals exercising quasi judicial functions are not Courts prescribed for trial or actions in courts nor are they bound by the strict rule of evidence. They can unlike courts obtain all information material for the points under enquiry from all sources and through all channels without being fettered by rules and procedures which govern the proceedings in Court. While doing so, the only obligation which law casts on the Tribunal is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give them a fair opportunity to explain it.

(See State of Mysore Vs. Shivappa Shivappa Makapur AIR 1963 SC 375).

In this regard it is very relevant to mention here that the copies of resume and documents annexed thereto have already been supplied to the parties by each other and both the parties have been given ample opportunity to explain it.

In this regard, it has to be seen as to whether the notification dated 10-12-1992 is in consonance with sub section (2) of section 3 of the Act. Section 3(2) of the Act reads as under :

Every such notification shall specify the grounds on which it is based and such other particulars as the Central Government may consider necessary."

From a perusal of the above-quoted provision it is ample clear that the notification must specify "the grounds" on which it is issued and further other particulars as the Central Government may consider necessary. Thus it is manifest that this provision has two limbs; firstly it is imperative on the part of the Central Government to specify the grounds without which the notification would not be in accordance with the Act; and secondly if the Central Government considers necessary may further disclose the particulars. Thus, as per the second limb of the provision regarding disclosure of the particulars it is not incumbent upon the Central Government to disclose it along with the grounds itself. However the same may be supplied by means of resume.

The provisions of Section 3(2) and its proviso are couched with very wide connotations. The proviso safeguards the Central Government from disclosing all the particulars at the time of notification. The Section 3(2) itself does not make it incumbent upon the Central Government to give all the particulars in the notification. That is why it has been provided that the Central Government may give such other particulars as it may consider necessary. The proviso to that section also makes it clear that the Central Government shall not be required to disclose any fact which it deems to be against the public interest.

Thus there are statutory reasons for making this provision. For instance if certain inflammatory and provocative words are used by the members of one community against the members of any other community and in case those words are published in the official Gazette alongwith the notification that publication itself would have adverse impact on the communal situation. It is for these reasons that it has been left on the discretion of the Central Government to give or not to give certain particulars in the notification.

At this juncture it would be appropriate to observe here that this Tribunal is constituted under the provisions of a Statute, therefore it is bounden duty of the Tribunal to act strictly within the four corners of the said statute. The reference made by the Union of India to this Tribunal vide notification dated 10-12-92 is only for the purpose of deciding whether or not there is sufficient cause for declaring the JEIH to be an unlawful organisation. This is the only limited scope and keeping in view this limited scope the Tribunal has to discharge its functions.

Thus the submission made by the learned counsel that by means of resume the Union of India is trying to introduce the matters which are not contained in the notification meaning thereby the grounds themselves are not sufficient, is of no avail for the simple reason as observed above that this is not the scope of the Tribunal. If the grounds are found to be insufficient the Tribunal may come to the conclusion

that there is no sufficient cause for declaring the Association as an unlawful association but this cannot be a ground for preliminary objection that without conducting enquiry and without examining the validity of the notification the notification be disapproved. This could be a ground for invoking extraordinary jurisdiction of High Court under Article 226 of the Constitution of India. Thus the ratio laid down in Mohinder Singh Gill's case (supra) may be of any avail if the notification is challenged under Article 226 of the Constitution of India but it is of no avail before this Tribunal at the stage of preliminary objection therefore this preliminary objection has no force consequently for the reasons stated above this preliminary objection is rejected.

The second preliminary objection raised by Mr. Soli J. Sorabji is that the Union of India has not claim a privilege in accordance with law for not disclosing the persons from whom the information has been obtained by them and which has become the basis for issuing this notification. In this regard he has placed strong reliance upon State of Punjab Vs. Sodhi Sukhdev Singh (AIR 1961 SC 493) whereby it has been held by the Apex Court that in such cases the privilege should be claimed generally by the Minister in charge who is the political head of the department concerned, if not, the Secretary of the Departmental head should make the claim and the claim should always be made in the form of an affidavit. When the affidavit is made by the Secretary the Court may in a proper case require affidavit of the Minister himself. The affidavit should show that each document in question has been carefully read and considered and the person making the affidavit is satisfied that its disclosure would lead to public injury. If there are series of documents included in a file it should appear from the affidavit that each one of the documents whose disclosure is objected to, has been duly considered by the authority concerned. The affidavit should also indicate briefly within permissible limits the reasons why it is apprehended that their disclosure would lead to injury to public interest.

In this regard Mr. Soli J. Sorabji also relied upon S. P. Gupta's case (AIR 1982 SC 149). He made much emphasis on the fact that no affidavit is filed by the Minister concerned claiming this privilege, and therefore the affidavits filed by Sri T. N. Srivastava Joint Secretary, Home Department, Govt. of India or Sri N. C. Padhi Joint Director, Intelligence Bureau are not sufficient to meet the requirements for claiming privilege.

Filing of affidavit only by the Minister concerned is neither contemplated under sections 123, 124, 125, nor under section 162 of the Evidence Act. On being asked by the Tribunal, Mr. Soli J. Sorabji submitted that in series of decisions considering this aspect the Apex Court has repeatedly ruled that Court in proper case may require the affidavit of the Minister himself and that is why he is making much emphasis that affidavit must be filed by the Minister.

In this connection it is noteworthy here that under Article 77 of the Constitution of India which deals about conduct of the Government business, the Business Rule framed by the President shall make the rules for the more convenient transactions of the business of the Government of India and for the allocation among Ministers of the said business.

Similarly Article 166 deals about the conduct of Government business in respect of a State Government.

Sri Sorabji could not lay his hands in pointing out that under the Business Rules framed by the President of India such affidavit is required to be filed only by the Minister concerned

Thus in the absence of any specific Business Rule to that effect, if the affidavit is filed by the Joint Director Intelligence Bureau Sri N. C. Padhi, in the opinion of this Tribunal, it is sufficient to meet the requirements. Besides this paragraph no. 4 of the



affidavit of Sri Padhi manifestly deals with the documents (Ext. 3 to Ext. 16) upon which the case of the Union of India hinges and satisfies the requirement. This paragraph no. 4 further states that these documents are in relation to affairs of the State and therefore 'sources' the same cannot be disclosed to the public and banned organization in the interest of the security of the State. The affidavit further mentions that the documents can be made available to the Tribunal if so desired and not only this, these documents have been produced before the Tribunal, and my predecessor in office had occasion to go through the same. This being so in the opinion of this Tribunal the affidavit filed by Sri N. C. Padhi fulfils the requirements of Sodhi Sukhdev Singh's case (supra) and S. P. Gupta's case (supra).

Besides this it may also be mentioned here that in a recent pronouncement of the Apex Court in *R. K. Jain Vs. Union of India* (AIR 1993 SC 1769, it has been ruled (in para 46) that :

In a clash of public interest that harm shall be done to the nation or the public service by disclosure of certain documents and the administration of justice shall not be frustrated by withholding the document which must be produced if justice is to be done it is the Courts duty to balance the competing interests by weighing in scales, the effect of disclosure on the public interest or injury to administration of justice which would do greater harm. Some of the important consideration in balancing act are thus : "in the interest of national security some information which is so secret that it cannot be disclosed except to a very few for instance the State or its own spies or agents just as other counters have. Their very lives may be endangered if there is the slightest hint of what they are doing. In *Mark Hosenball R Vs. Home Secretary ex parte Hosenball* (1977 1 W.L.L. 766 in the interest of national security Lord Denning M. R. did not permit disclosure of the information furnished by the security service to the Home Secretary holding it highly confidential. The public interest in the security of the realm was held so great that the sources of the information must not be disclosed nor should the nature of the information itself be disclosed."

Thus for what has been stated above in the opinion of the Tribunal, the affidavit filed by Sri N. C. Padhi fully meets the requirements of the Act and there is no illegality in the privilege claimed by the Union of India. Accordingly second preliminary objection raised by learned counsel for JEIH is also rejected.

Mr. Sorabji learned senior counsel for the JEIH raised third preliminary objection that in the affidavit filed by the Government of India, it has not been stated as to from which source this information has been obtained, with the result it is not possible for the organisation to cross examine the witnesses effectively.

This preliminary objection was considered by my learned predecessor in office and by order dated 17-5-93, it was made clear that in this regard no blanket order can be passed by the Tribunal. However, in case the organisation makes out a case by means of an application for cross examination of certain persons appropriate order can be made after hearing the parties. It was left open to the JEIH to make an application to that effect by 8th July 1993.

Accordingly the application was made on behalf of JEIH stating therein that the affidavits filed on behalf of the Union of India by Mr. T. N. Srivastava Joint Secretary Ministry of Home Affairs does not state the source of information received by them. In this regard learned counsel for the Union of India drawn attention of the Tribunal to the affidavit of Sri N. C. Padhi Joint Director Intelligence Bureau dated 19th April 1993 particularly paras 3 and 4 wherein it has been stated that these reports were received in the office of the Intelligence Bureau in normal course of business through authenticated, reliable and secured sources. These reports Exts. 3 to 16, in fact include Ext. P-4 to P-14 source of which is sought for by the application. According to learned counsel for the Union of India the source of the reports cannot be disclosed to public and banned organisation in the interest of the security of the State.

In view of above, the application was dismissed by my learned predecessor in office vide order dated 28-5-93 and the third preliminary objection was rejected accordingly.

Mr. Soli J. Sorabji learned counsel appearing for JEIH vehemently contended that the evidence adduced by the Union of India is hear say evidence and the same is not admissible even before the Tribunal. However, to support this contention the learned counsel could not lay his hands in citing any judicial pronouncement to the effect that a Tribunal exercising quasi judicial functions (but not purely judicial functions) is bound to strict rules of evidence. No doubt, before the Courts of law strict Rules of evidence are to be followed and hear-say evidence is not admissible but there is a distinction between a Court and the Tribunal. As observed in *Shiv Masappa's case* (supra) Tribunals exercising quasi-judicial functions are not Courts and therefore strict Rules of evidence are not applicable for its proceedings.

In this regard Lord Denning's observations made in *T. A. Miller Ltd. Vs. Minister of Housing & Local Government* [1968 (2) All England Law Reports—633] cannot be lost sight of. In this case the Court of appeal while dealing with the question of technical rules of evidence being applicable or not to the enquiry being held by a Tribunal acting under statutory authority, it has been observed by Lord Denning that while dealing with the question of a letter written by one person which was relied upon by the Inspector in his report that such a letter could be admitted even though the same amounted to hear-say evidence. The contention was raised that the said letter did not contain any statement on oath and no opportunity having been given to test the same by cross examination the same could not be taken into consideration. While repelling the said contention it was held that a Tribunal of this

kind is a master of its own procedure provided that the rules of natural justice are applied. Although most of the evidence was on oath that was no reason why hear-say should not be admitted where it can fairly be regarded as reliable and the Tribunals are entitled to act on any material which is logically probative even though it is not evidence in a court of law. It was further emphasised that hear-say is clearly admissible before a Tribunal but no doubt in admitting it the Tribunal must observe the rules of natural justice but it does not mean that it must be tested by cross examination. It only means that the Tribunal must give other side fair opportunity of commenting on it and of contradicting it. Thus it was argued by Sri Malhotra that I. B. reports which have been proved in this case by filing annexures & exhibits and proved by Sri N. C. Padhi Joint Director of I. B. may amount to hear-say evidence yet keeping in view its probative value the same are admissible in evidence notwithstanding the fact that I. B. officers who had collected and made those reports have not been examined and to that extent no opportunity is given to the organization JEIH for cross examining such officers. In this regard Sri Malhotra learned counsel appearing for Union of India also relied upon decision of the Apex Court in State of Harvana Vs. Rattan Singh (A.I.R. 1977 SC 1512) wherein it is laid down that in a domestic enquiry strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible and there is no allergy to hear-say evidence provided it has reasonable nexus and credibility. Thus, there is no reason to doubt the total documents filed by the Union of India.

After hearing rival arguments advanced by learned counsel for respective parties on this issue, this Tribunal has arrived at the conclusion that the Tribunal while exercising quasi judicial functions is not a court and therefore such documents whose copies etc. have already been supplied to the JEIH affording full opportunity meeting the rules of natural justice, are indeed admissible in evidence. The objection raised by Sri Sorabji is disposed of accordingly.

Now proceeding with the enquiry it is relevant to have the case of Union of India against the JEIH first.

To support the case on behalf of the Union of India a resume is filed supported by affidavits of Sri N. C. Padhi and Sri T. N. Srivastava. Vide Annexure A to the resume it is submitted that JEIH is an association of fundamentalist Muslims who believe in basic creed "La Ilah Illallahu Moham-madur Rasuluhna" i.e. Divine Being is solely Allah there being no God except Mohammad. It believes that He alone is deserving of worship and He alone is the rightful one to whom obedience and allegiance are due and no one in any of these capacities is his associate. He is the only one to be worshipped. The objects of the Jammat-e-Islami are to bring about Islamic order in the sphere of various activities i.e. social, political and religious administration. The very constitution of JEIH is repugnant to the Constitution of India which speaks of secular socialistic and democratic republic and in which the freedom

of conscience and free profession, practice and propagation of one's religion is a guaranteed fundamental right.

It operates through the council of representatives who elect their Amir who is called Amir-e-Jammat. Sri Mohd. Sirajul Hassan has been the Amir-e-Jammat for the last few years.

Vide Annexure B it is stated that on 27-5-1990 in one of the closed-door meetings at New Delhi in the gathering of about 200 to 250 people Sri Sirajul Hassan who is Amir of JEIH stated that Kashmir could not be kept in India and no one could stop its separation from India. In the said meeting besides Sri Sirajul Hassan one Dr. Rafat who is a member of the Markazi Majlis-e-Numaindagan (Council of Representatives) within Article 11 of the constitution of the JEIH stated that the Muslims did not believe in nationalism; they believed only in Islam. The love for the country is not above Islam but it came much after. Solution of the problem lies in proper Dawat programme among the Hindus and bringing them in the fold of Islam. One of its members S. Q. R. Illias further stated that JEIH should organise its Seminars and Symposia throughout the country to make a wind favouring independence of Kashmir. He exhibited a number of press clippings advocating that the Govt. of India should agree to provide freedom to Kashmir as a solution to the problem. He exhorted Muslims that efforts were being made to decrease the Muslims numerically by killing them in riots and by destroying their property. One of the office-bearers, Sri Kausar Yazdani, Amir, Delhi Halqa stated that Prof. Basirul Haq, the slain Vice-Chancellor of Kashmir University was a Kafir, as he had prepared the material against Muslim Personal Law which was presented in the Parliament. These facts are clear from the Government record.

Similarly vide Annexure-C it is stated that on 1-8-1991 Sri Abdul Aziz who is a Naib Amir of JEIH addressed a closed-door meeting of Students Islamic Movement of India in Malerkotla in Punjab and stated that the Government should hold a plebiscite in Kashmir, which questions the territorial integrity of the country.

Similarly vide Annexure-D, it is submitted that on 28-7-1991, at the weekly Izetma of Delhi Halqa of JEIH Sri Kausar Yazdani, Amir of Delhi Halqa, said that Pakistan would be in an advantageous position if there was a war between India and Pakistan. He further said that Pakistan, besides having technologically advanced weapons, would have the benefit of Punjab and Kashmir situations.

Similarly vide Annexure-E, it is submitted that on 6-8-1991, in a secret meeting held at the residence of Jallaludin Ahmad, Secretary of JEIH, Chopra unit, West Dinajpur, West Bengal which was attended by about 500 activists, members called for a united struggle for a Muslim land on the lines of "Gorkha Land" and "Bodo Land" and to render all help to JEIH activists to achieve this goal. The members of JEIH have been even harbouring muslim leaders from other countries who have been entering into India illegally and giving provocative speeches at the

gatherings of JEIH, inciting and provoking the members for carrying out the unlawful activities and forming unlawful associations.

Similarly vide Annexure-F, it is submitted that on 15-9-1991 Sultan Qureshi, a Karkun (worker) of JEIH at Delhi stated that Muslims lack unity and once they get united and come under one flag, establishment of Islamic Government would not remain a far off dream. He stated that Tehriq Islami JEIH have never believed in democracy. He further stated that Islam would come to power in this country which would be the solution for all the problems of Muslims. Maulana Ashir Ahmed, member of JEIH exhorted the members to adopt the concept of Jihad as the way of their life on the plea that Muslims in Jammu and Kashmir had infused in themselves a concept of Jihad. JEIH decided to establish secret hide-outs in various parts of India for holding discussions and meetings to pursue their unlawful activities.

Similarly vide Annexure-G, it is stated that on 20th October 1991, Sultan Qureshi, a karkun of JEIH addressed a Weekly Iztemah of Delhi Halqa and claimed that the Muslims were better administrators and that if Islamic rule was established it would set right everything.

At this stage it is necessary to clarify "Karkun" and "Rukun". "Karkun" is a worker in JEIH who works for exclusion of the principles of JEIH and also obeys its instructions. "Rukun" is a member of JEIH. Karkun may not be necessarily a member of the JEIH. The JEIH has as many as 4000 Rukuns. Karkun workers may also be in thousands.

Vide Annexure-H, it is submitted that on 16/17 November, 1991, in a secret conference where members and office-bearers of JEIH were present, Kausar Yazdani, a member of Markazi Majlis-e-shoore (Central Advisory Council) exhorted the participants to intensify the Dawat upon non-Muslims to bring them under the fold of Islam so that the Islamic rule could be established in the country which would be panacea for all the troubles prevailing in the country.

Similarly vide Annexure-I, it is stated that on 19-1-1992 at a Weekly Iztemah of Delhi Halqa, Asram Alam, a karkun, exhorted the members against placing any reliance on a Hindu or Hindu organization as according to him, a Hindu or Hindu organization cannot tolerate the rise of Islam and thus cannot be a friend of Islam.

Similarly vide Annexure-J, it is stated that on 26-4-1992 in the meeting of Delhi Halqa of JEIH Sultan Qureshi asserted that the disintegration of the country was not far off and exhorted the Muslims to come forward to work for the spread of Islam. At the same meeting, Iztemah, Kausar Yazdani and others said that liberation of Kashmir was not far off.

Similarly vide Annexure-K, it is submitted that on 3-5-1992 Sultan Qureshi, a karkun addressing a Halqa meeting of JEIH Delhi told the members that he had visited Rajasthan to participate in Ambedkar Centenary celebrations and stated that the crowd was in no mood to hear anything else other than Ambedkar and Jagjivan Ram. He, however, could draw the

attention of the crowd by highlighting discrimination and injustice and had exhorted the persons who had come to participate to boycott Vedas and Hindu religion which was responsible for their plight at the hands of high caste men.

Similarly vide Annexure-L, it is stated that on 31st May, 1992 a secret meeting of JEIH was held at Shankarpur, district Murshidabad in West Bengal. A member of JEIH, Hazi Mohammad Khuda Bux while highlighting the performance of Jamaat-e-Islami stated that due to the influence of JEIH Islamic rule has been established in Algaistan ousting the pro-Russian Nazibullah.

Similarly vide Annexure-M, it is submitted that on 24th-25th October, 1992 in district Murshidabad, while inaugurating the District Conference of JEIH, Mr. Raisuddin Amir narrated the historical background of Islam and expressed deep concern over the prevailing communal situation in the country. He reminded the audience that unity of Muslims was the need of the hour. He stated that communal feelings were being fanned by Hindu Fundamentalist parties particularly the lobby of Brahmins in the country. He urged the Muslims to remain alert against these forces as otherwise the existence of Muslims in India will be at stake. He stressed that the mission of JEIH was to remind the Muslims to establish a society based on pure Islamic culture. He thereby committed acts promoting enmity between different religions prejudicial to the maintenance of communal harmony and levelled imputation prejudicial to National integration.

Similarly vide Annexure-N, it is submitted that on 6/7-12-1992, Kausar Kavoani, talking to JEIH at Delhi stated that had the Muslims been united, this was the opportune time for giving a fatwa for Jihad. He exhorted the gathering that the Muslims of today were far more stronger than the Muslims just after partition. He claimed that Muslims are descendants of martial race and if united could easily butcher 75 crores of Hindus divided in caste and community, backward and forward classes. He stated that flesh of Hindus should also be made permissible for Muslims. He hoped for early liberation of Kashmir from Indian occupation and strengthening the hands of Pakistan.

Mr. Malhotra, learned counsel appearing on behalf of the Union of India further stated that JEIH has three trusts namely (1) Dawat Trust (2) Board of Islamic publications and (3) Ishaat-e-Islami Trust. Dawat trust prints and publishes a Hindi monthly Journal named Kanti and Urdu bi-weekly Dawat. Both these journals propagate aims and objects of JEIH and are aimed at bringing Islamic order in the society. The Board of Islamic publications prints and publishes a Weekly Journal by the name of Radiance which is also used to propagate the ideology of JEIH. Ishaat-e-Islami trust is broadly looking after the control of Jamaat printing press and Markazi Martaba Islami. The Jamaat printing press is used for printing of Dawat and other inflammatory material. In the same manner Markazi Martaba Islami is used for publication and sale of the JEIH literature within the country and abroad.



Vide Annexure-O, it is submitted that 'Radiance' in its publication dated 19/25 January, 1992 alleged that the Muslims felt convinced that there was genocide of Muslims and the Government and communal forces were equal partners therein.

Vide Annexure-P it is submitted that Mohd. Sirajul Hassan who is Amir of JEIH is also the Chairman of Dawat trust and Board of Islamic publications which is clear therefrom.

It is also submitted that Mr. Parvez Rahmani who is the editor of Dawat which is published by Dawat trust is also rukun of JEIH which can be established from the list of rukuns of JEIH.

It is next submitted that Mr. Syed Yusuf who is Secretary of JEIH had called a meeting of the trustees of the Dawat trust on 3-10-1992 vide circular dated 29-9-1992 at the residence of Mohd. Sirajul Hassan. The said Syed Yusuf is also shown as a trustee in charge of Dawat trust in the said letter. He is also shown as rukun of JEIH. Said Syed Yusuf is also said to be Honorary editor of the Weekly paper Radiance printed by the Board of Islamic Publications Sri Sirajul Hassan is the Chairman of the Board of Islamic publications which is apparent from a letter dated 29th September, 1992 written by the Secretary of the Trust. Syed Yusuf called a meeting of the governing council of the Board of Islamic publications at the residence of Mohd. Sirajul Hassan on 24-10-1992. Syed Yusuf besides being Secretary of the Board of Islamic publication is also Secretary of JEIH.

Vide Annexure-O, it is stated that Radiance dated 7 to 13 June, 1992 published an interview of Syed Ali Geelani leader of outlawed Jammu and Kashmir Jamat-e-Islami who openly stated that Kashmir was a disputed territory and without Kashmiris' right to self-determination every kind of talk would be meaningless. He stated that the only goal they had was the right to self-determination.

Similarly vide Annexure-S, it is submitted that Dawat in its publication dated 4-4-1992 had stated that Indian Muslims were being subjected to destruction migration Bhattiya Karan (Indianisation) Shudhi (purification) through schemes prepared along the lines adopted by those who destroy Muslims. Provocative advertisements are issued daily in Hindi newspapers with a view to create panic among Muslims.

Similarly vide Annexure-T it is stated that Dawat of 25-5-1991 claimed that from the telecast of Ramayana and Mahabharat it had become clear that TV was being used as part of a plan to subvert the entire country into Hindu stream. It also accused the Government that after unlocking of the Babri Masjid in Ayodhya every celebration in Ayodhya and Bhajan Kirtan inside the Babri Masjid was projected as an achievement of the Government.

Similarly vide Annexure-U, it is stated that in its publication dated 1-12-1991, Dawat stated that India had never been a single political entity before the advent of Islam. It was further stated that it was the Islam which transformed the society with a unified nation having some cultural ties based on Islamic principles.

Similarly vide Annexure-V, it is submitted that Dawat in its publication dated 13-1-1992 stated that if the troubles of Christians Quadianis and Shia brethren is a fact in Pakistan then oppression of Harijans by the high caste Hindus and the campaign and against minority by certain political groups cannot be denied in India. The paper claimed that Indian media was indulging in separatist movement of Sindhis in Sind in Pakistan. It criticised the role of media in India in giving life to Bangladeshi nationalisms in East Pakistan and stated that if ambition of Indira Gandhi to keep Bangladesh under Indian influence permanently could not be fulfilled the sentiments of provincialism and parochialism got encouragement in India after the events in Bangladesh.

Similarly vide Annexure-W, it is submitted that Dawat of 28-8-1992 alleged that BJP had only one point programme i.e. open enmity against Muslims. Any problem according to BJP is only one which involves Muslims or Muslim country and which can be made basis for spreading hatred against Muslims. It stated that BJP considers that it can come to power only on the basis of anti-Muslim stand.

Similarly vide Annexure-X, it is stated that Dawat on 16-10-1992 in its Editorial captioned "Basic responsibility of the Muslims" discussed the role of Jamaat-e-Islami Hind and other Muslim organisations and alleged that Muslims were facing the problem of survival of their religious identity and alleged that some circles had become openly active to ruin Muslims and to suppress them under the cover of particular culture.

Pursuant to the show-cause notice issued by the Tribunal the JEIH filed its reply stating therein that the JEIH is an unregistered society of which Shri Maulana Mohammad Sirajul Hassan is the President and Sri Mohammad Jafar is the Secretary General.

The Jamaat was established in April 1948. It is at all India Organisation. It is a Deeni (religious) denomination-cum-organisation. The activities of the Jamaat are political and non-communal besides being spiritual and religious. The objective of the Jamaat is Iqamat-e-Deen, the real motive of which is solely the achievement of Divine pleasure and success in the Hereafter. The activities of the Jamaat have always been open. There is absolutely no secrecy.

The JEIH has submitted reply of all the three grounds set out in the notification in question for declaring it an unlawful association. As regards the first ground namely that Maulana Sirajul Hassan declared in a meeting in Delhi on 27th May, 1990 that the separation of Kashmir from India was inevitable it is stated that no such statement was at all made and the said ground is based on a non-existent fact and is totally baseless. It is submitted that the mere expression of such an opinion assuming that the same was voiced can have no material bearing or real nexus with the sovereignty and territorial integrity of India.

As regards the second ground that Abdul Aziz Naib Ameer of the Jamaat observed that the Government of India should hold a plebiscite on Kashmir it is stated that no such observation was made and assuming that the observation was made no reasonable person, properly directed in law and acting with a

sense of responsibility can arrive at the conclusion that the said observation amounts to an unlawful activity. It is further submitted that a tape record of the speech is also available.

So far as third ground of the notification namely that the Jamaat has been disclaiming and questioning the sovereignty and territorial integrity of India is concerned it is stated to be totally vague and baseless as no particulars have been given.

It was further stated that other facts and materials in possession of the Government were mere ipse dixit of the Government.

The Union of India filed its reply on 11-3-1993 and controverted the pleas put forward by JEIH. After the said reply by the Union of India on 16-3-93, the JEIH sought time to file the reply which was granted till 26-3-93. Again reply was not filed by the JEIH and further time was granted and the JEIH ultimately filed its rejoinder on 3-4-93. The Union of India filed sur rejoinder on 8-4-93.

The Union of India filed affidavits of Sri N.C. Padhi, Joint Director in Intelligence Bureau, Ministry of Home Affairs and Sri T. N. Srivastava, Joint Secretary, Ministry of Home Affairs.

Sri N. C. Padhi stated that Annexures B to N to the Resume are illustrative reports about some of the activities of JEIH. He has submitted in his affidavit that these reports were received by the Intelligence Bureau in the normal course of business through authenticated, reliable and secured source. He proved the said reports as Ext. 3 to Ext. 16. He has also proved the 'Radiance' weekly newspaper for the 19th to 25th January 1992 as Annexure-P 18 and for 7th to 13th June 1992 as P 19. He has proved Dawat newspaper as Ext. P-20 to P-24 and the English translation of the relevant portions of Ext. P-20 to P-24 have been exhibited as P-25 to P-29. He claimed that the sources of these reports were unpublished official records relating to the affairs of the State and could not be shown to the unlawful organisation in the interest of security of the State but he emphatically stated that the said record could be made available to the Tribunal if desired.

It may be observed here that actually the record was made available to my predecessor in office and he had an occasion to go through the said record.

Sri Padhi has stated that JEIH is a communal and anti national organisation which had been spreading communal disharmony and disaffection and its activities had been kept under observation by the Union of India. He has stated that its office-bearers and members had been including in unlawful activities and forming unlawful association within the meaning of Section 2(f) and (g) of the Act.

Similarly Sri T. N. Srivastava, Joint Secretary, Home Affairs Union of India in his affidavit has proved the notification dated 10-12-1992 as Ext. P-1 and the Resume as Ext. P-2. He has proved Ext. P-17 as the constitution of the JEIH and has placed on record the newspapers Dawat Radiance and the English translation of the relevant extracts thereof.

According to the Union of India as per IB report (Annexure-B to the Resume) Ext. P-3, a quarterly Ijtema of 200 to 250 workers of Delhi Halqa of JEIH was held at Jama Masjid, Zakir Nagar Okhla, New Delhi on May 27, 1990 from 9.00 AM to 5.30 AM. According to the report the important speakers at the Ijtema were S.Q.R. Ilias R.W. 11, Member Majlis-e-Numaindgan Javed Ali, Ex-General Secretary S.I.O., Alshar Qarim Kidwai Mohd. Nayyer and Sirajul Hasan R.W. 4, Amir of JEIH.

The JEIH filed affidavits and examined 12 witnesses namely : RW 1 Syed Yusuf, RW 2 Parvez Rehmani, RW 3 Ejaz Ahmad Aslam, RW 4 Mohd. Sirajul Sassan, RW 5 Sultan Qureshi, RW 6 Asrar Alam, RW 7 Abdul Aziz, RW 8 Mohd. Zafar, RW 9 Kasar Yazdani, RW 10 Dr. Mohd. Rafat, RW 11 S.Q.R. Ilyas & RW 12 Dr. Raisuddin.

These witnesses examined by JEIH were cross-examined on behalf of Union of India. A combined reading of the cross-examination of these witnesses established beyond reasonable doubt that the meetings of JEIH as alleged by the Union of India were held on 27-5-90 at Delhi on 1-8-91 at Malerkotla, on 16-11-91 at Jafarabad in trans Yamuna area and on 24 & 25-10-92 at Murshidabad West Bengal.

RW 9 Sri Kasar Yazdani in his cross examination admitted that he attended the meeting held on 27th May, 1990 inside the Jama Masjid, Zakir Nagar, Okhla, New Delhi, RW 3 Sri Ejaz Ahmad Aslam admitted that conference of JEIH was held in trans Yamuna area in Jafarabad on 16th November 1991 and he spoke in the conference. RW 4 Sri Mohd. Sirajul Hassan in his cross-examination admitted that a meeting of JEIH was held on 27th May 1990 in Jama Masjid of Zakir Nagar Okhla, New Delhi and he participated in the same. RW 6 Asrar Alam in his cross examination admitted that the meeting was held on 27-5-90 and he participated in the same. RW 7 Abdul Aziz in his cross examination admitted that he had gone to address the meeting at Maler Kotla Sangroor. RW 11 S.Q.R. Ilyas in his cross examination admitted that the meeting was held on 27-5-90 at Delhi and he participated in that meeting and he was convener of the meeting. RW 12 Dr. Raisuddin in his cross examination admitted that a conference of JEIH took place in Murshidabad, West Bengal on 24th and 25th October, 1992 and he attended the conference towards the end of first day of the meeting and spoke in the conference.

Thus as stated above, it is crystal clear that the Union of India has proved beyond reasonable doubt that the meetings of JEIH took place. Now coming to this aspect of the matter as to what actually transpired in those meetings it is very relevant to observe here that though in strict sense rule of evidence is not applicable before the Tribunal yet broad principles of the rule of evidence cannot be lost sight of. The burden of proof of pleadings in this respect cannot be confused with burden of adducing evidence which is described as shifting. No doubt, the burden of proof never shifts. It always remains constant. Initial burden of proving prima facie case is cast on the party who alleges certain facts and if he gives evidence in support of that prima facie case, the onus shifts on the other side to adduce evidence to meet the case made out by the other side. As the case continues to develop the onus shifts again to one party and again shifts to other.



In the instant case where the Union of India alleged that on 27-5-90 meeting of JEIH took place at Delhi and on 1-8-1991 at Malerkotla wherein certain inflammatory statements were made and unlawful activities took place which is apparent from the notification and the Union of India proved the same by adducing witnesses namely Sri N.C. Padhi and Sri T. N. Srivastava and the fact of holding the meetings at both the places and participation therein by the JEIH is admitted, thus the onus shifts on JEIH to adduce evidence that the unlawful activities as alleged by the Union of India did not take place in those meetings. The failure to disclose leads to the inference that what transpired in those meetings was within the special knowledge of JEIH but they did not disclose the same for obvious reasons. Non-disclosure of actual happenings in the meetings goes against the JEIH and the law presumes that the allegations made by the Union of India are correct as nothing has been brought on record contrary to it by JEIH.

One of the grounds taken by the Union of India in the notification is that in a meeting of JEIH held on 1-8-1991 at Malerkotla Sri Abdul Aziz, Naib Ameer of the Jammāt made observations that the Government of India should hold a plebiscite on Kashmir. In this regard it is necessary to mention here that it is not the case of JEIH that no such meeting took place at Malerkotla rather on page 31 of the reply submitted by the JEIH it has been specifically stated that a tape record of the speech is also available. In this respect the statement of Sri Abdul Aziz RW 7 in cross-examination is very relevant. In the cross examination he stated that he is a member of JEIH since 1950 and became the Vice President in 1990. In the capacity of Vice President he had gone to address meeting at Maler Kotla Sangroor. There were about 50 persons present in the meeting. There were members of students Islamic Movement of India. The students put certain questions which were replied by Sri Abdul Aziz. He has further stated that he expressed his thoughts on communalism as well.

Thus from the above statement of Sri Abdul Aziz RW 7 holding of meeting at Malerkotla Sangroor is absolutely proved. It is also proved that he addressed said meeting. Therefore, it has to be presumed that what observations were made by him in the said meeting were well within the special knowledge of this witness, thus as observed above onus to adduce evidence in rebuttal pertaining to his observations in the said meeting shifted on this witness who participated in the meeting in his capacity as Vice President of JEIH but he having failed in doing so, the inference is to be drawn against the JEIH. As stated in the reply submitted by the JEIH the tape record of the speech was available, but it was not produced before this Tribunal.

During the course of arguments learned counsel appearing on behalf of JEIH submitted that the tape record may be produced before this Tribunal but ultimately it was not produced before the Tribunal.

In Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others (AIR 1968 SC 1413) it has been ruled that even if burden of proof does not lie on a party, the court may draw an adverse inference, if

he withholds important documents in his possession which can throw lights on the facts at issue.

Thus the tape record in possession of JEIH is the most important evidence and throws direct light on the facts at issue. This best piece of evidence in possession of JEIH has been suppressed. Therefore the inference is to be drawn against the JEIH. The JEIH cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

As regards first ground taken by the Union of India in the notification that Maulana Sirajul Hasan declared in a meeting in Delhi on 27th May, 1990 that separation of Kashmir from India was inevitable. In this regard statement of Mohd. Sirajul Hassan RW 4 is to be considered. In his cross-examination he stated that he is active member of JEIH since 1957. In 1990 he became the Amir of JEIH. He stated that Dawat Trust and Ishrat-e-Islam Trust were formed by JEIH. He received invitations in connection with Seminars from Saudi Arabia and Kuwait when he became Amir of JEIH. On 27th May, 1992 he was in Delhi and he did participate in the meeting. The meeting was fixed after consulting him and confirming his participation. He had made up his mind as to on which subjects he had to speak. He had noted certain points on a piece of paper on which he was to speak. The meeting took place in Jama Masjid of Zakir Nagar, Okhla, Delhi. He delivered his speech in the afternoon. He spoke about 30 to 45 minutes. It is further stated that S.Q.R. Ilias and Kausar Zadhoni were present in the said meeting.

He further stated that he is Chairman of Dawat Trust, Board of Islamic publications and Ishrat-e-Islam Trust. Sayed Yusuf is the Secretary of the Board of Islamic Publications. These trusts publish all the three papers namely Dawat Radiance and Kanti Hindi Monthly separately. He also stated that it is in Hind that is why it is called Jamaat-e-Islamic Hind in different countries such as in Pakistan, Sri Lanka, Bangladesh. In Afganistan there is Jamaat-e-Islamic of those countries.

When this witness was in possession of all those informations and he admitted that the meeting took place on 27th May, 1990 and he participated in that meeting, the meeting was fixed after consulting him and confirming his participation, the onus to prove as to what transpired in that meeting shifts on him and the suppression of this material evidence leads to the inference that the allegations made by the Union of India are correct.

Similarly RW 11, SQR Aliyas, in his cross examination admitted that he is member of JEIH from 1980. He was present in the meeting held on 27-5-1990 at Delhi. He further stated that Dr. Rafat's paper was read over in the meeting but he did not know as to who read that paper. He denied reading of Dr. Rafat's paper by him, though he was present in the meeting and he spoke for about 30/35 minutes. On the fact as to who read Dr. Rafat's papers he was confronted with his earlier statement made vide para 7 of his affidavit wherein he stated that Dr. Rafat's paper was read over by him in the meeting in the morning session. Thus



from his statement apparently it appears that this witness has not deposed the truth deliberately and with a view to suppress the material fact. This suppression of material fact leads to the conclusion that the allegations made by the Union of India are correct.

Sri Kausar Yazdani, RW 9, who is member of JEIH and President of Delhi Zone of JEIH admitted that he attended the meeting of 27th May, 1990 held at Jama Masjid, Zakir Nagar Delhi. He did not tell the name of persons who spoke in the meeting and the subjects on which they spoke. He also admitted that the meeting took place inside the Jama Masjid, Zakir Nagar, Okhla, New Delhi. He admitted that Sri S. Q. R. Ilyas was also present in the meeting. He stated that the meeting started at 9.00 A.M. and it continued upto 4.30 P.M.

He stated that he used to note in his diary as to when he has to attend the meeting of JEIH but he did not bring the diary to this Tribunal. Thus it is clear that he was in possession of such a document by which he could have proved the holding of all the meetings of JEIH but he deliberately suppressed this best piece of evidence which could throw direct light on the point in issue.

The statement of this witness also leads to the inescapable conclusion that this witness is also falling in line of other two witnesses discussed above in suppressing the material truth. The Tribunal may observe that when the fact in relation to the meeting dated 27-5-1990 is admitted then what transpired in the meeting is within the special knowledge of this witness who attended the meeting and it was for him to disclose the contents of speeches delivered by the speakers failing which the inference would be drawn that the facts alleged by the Union of India regarding ground No. 1 are correct.

The next important witness examined on behalf of JEIH is RW 1 Syed Yusuf who claims himself to be Secretary of JEIH as well as office-bearer. He admitted that he is the Secretary of this organisation since 1982. He admits that he normally attends the meeting of JEIH. He further admits that the Board of Islamic Publications which publishes Radiance Views weekly is an independent society registered with the Registrar of Societies, Delhi. He further admits that Maulana Syed Abul Hasan Naqvi known as Ali Miah and Rector of Nadwatul Ulema, Lucknow, Maulana Mohd. Sirajul Hasan, President, Ibrahim Khalilullah Khan, Mohd. Shafi Munish, Prof. Dr. Ahmad Saijad of Ranchi University, Mr. Iqbal Workwala are the members of the Board of Islamic Publications. He further admits that Sri Sirajul Hasan RW 4 is also President of Governing Council of the Board of Islamic Publications. He further admits that this JEIH was also banned in 1975.

Thus from his statement it is clear that once this association had been banned for its unlawful activities. It is apparent that it has not got spotless history and it is also not that this Association is only indulging in social upliftment of poor masses of muslim community but is also indulging in attempt to commit unlawful activities within the meaning of

the Act which cannot be ruled out considering the overwhelming evidence on record. It is surprising that this witness admitting himself to be Secretary of the Association failed to reply the sources of funds for Trust regarding which his answer is that he does not know. This denial leads to the conclusion that the witness does not wish to depose the truth about the total activities of the JEIH. Indeed the suspicion howsoever grave may be shall not take place of evidence, but this witness being Secretary of JEIH is supposed to be aware of total activities of the association including the sources of the fund. In this regard less say is better reason being no association can be run without funds particularly alongwith 5 sister organisations publishing weekly etc. His whole statement though cannot be reproduced yet if not very minutely but looked even with bird's eye would reveal that this organisation is prime source of origin of other sister organisations and therefore heavy funds must have been involved for carrying on total activities of the association. The source of receiving funds which is being concealed by this witness creates numerous doubts and reflects upon the veracity of his statement.

Now coming to the witnesses examined on behalf of Union of India namely Sri N. C. Padhi and Sri T. N. Srivastava it may be stated that though they have been cross-examined at length by Sri R. M. Tuffail learned counsel for the JEIH but nothing has been brought on record which could suggest or lead to the conclusion that with some ulterior motive or otherwise this organisation has been implicated falsely.

Sri T. N. Srivastava, Joint Secretary, Ministry of Home Affairs, Govt. of India proved the copy of the notification dated 10-12-1992 which was duly published in Extra ordinary Gazette of the same date. Therefore, a resume was filed stating facts and other materials in support of the said notification on 8-1-1993 and the same is marked as Exhibit P2. Thereafter whatever documents were received by the Ministry of Home Affairs in connection with activities of JEIH the said reports are filed as Annexures B to N and P to the resume which are illustrative of the activities of JEIH. Besides other materials these reports were read and considered for issuance of the said notification dated 10-12-1992. They are Exhibit 3 to Exhibit 16 respectively and English translation of the constitution of JEIH is Exhibit 17.

'Radiance' and 'Dawat' which are the publications of the Trust of JEIH have published various materials as is evident from the copies of the Newspapers 'Radiance' and 'Dawat'. Copies of the Newspapers reports of 'Radiance' are Annexures O and Q to the resume. They are Exhibit P-18 and Exhibit P-19. The English translation of the relevant portion of gist of the Urdu 'Dawat' has also been annexed to the resume Urdu Newspaper reports are Annexures S, T, U, V, W, X to the resume. Exhibits 20 to 25 are English translation of the relevant portions of the Urdu Weekly paper 'Dawat'. Copies of the Urdu paper 'Dawat' are exhibited as Exhibit 26 to Exhibit 31.

After 6-12-1992, i.e. after demolition of Ram Jannia Bhoomi Babri Masjid structure, there were communal riots all over the country and intensive

damage to property was done. Many lives were lost according to which Andhra Pradesh-26, Assam-93, Bihar-49, Haryana-1, J & K-1, Karnataka-78, Kerala-17, Maharashtra-841, M. P.-171, Orissa-4, Rajasthan-58, Tamilnadu-2, U. P.-192, West Bengal-46 and Delhi-17.

In the prevailing situation after 6-12-1992 to allow the JEIH to function would have meant aggravation of the already surcharged communal atmosphere therefore, it became necessary to stop the activities of JEIH forthwith and consequently the Government declared it as an unlawful association under section 3(1) of the Act.

Similarly Sri N. C. Padhi, Joint Director, Intelligence Bureau, Ministry of Home Affairs, Govt. of India has also stated on oath that Annexures B to N to the Resume are illustrative reports about some of the activities of JEIH and they are true copies of the originals. These reports were received in the office of the I. B. in normal course of business through authenticated reliable and secured sources. They are Exhibit-3 to Exhibit 16. Copies of Radiance dated 19-25 January, 1992 and 7, 13 June, 1992 are Exhibit P-18 and Exhibit P-19. Copies of 'Dawat' are Exhibit P-20 to Exhibit P-24 and the English translation of relevant portion is Exhibit P-25 to Exhibit P-29.

While claiming privilege this witness Sri N. C. Padhi stated that the source of these reports Exhibit 3 to Exhibit 16 are unpublished official record relating to the affairs of State and cannot be disclosed to the public and the banned organisation in the interest of the security of the State. However, it can be made available to the Tribunal if so desired.

The material available with the Intelligence Bureau is made available to other agencies of the Government from time to time and was available to the Ministry of Home Affairs prior to issue of the notification under the Act on 10-12-1992. The JEIH being a communal and anti-national organisation which had been spreading communal disharmony and disaffection its activities had been kept under observation by the I. B. since its inception. Its members and office bearers had been doing unlawful activities and forming unlawful associations within the meaning of section 2(f) & (g) of the Act. This had also been regarded as a communal organisation and was being dealt with under the normal laws of the land till the events of December 6, 1992, when the country was faced with the worst communal riots since partition. In the face of this extraordinary situation the Government felt the need to deal with some of the apex communal organisations under the special provisions of the law. The JEIH was one amongst the organisations selected for this action.

The Tribunal may observe here that if relevant paragraphs of the resume filed on behalf of the Union of India are highlighted at this stage it would be convenient to appreciate the matter in hand particularly in the light of the grounds referred to in the notification as to how JEIH promoted hatred ill will religious disharmony jeopardising the sovereignty and territorial integrity of the country besides the feelings of enmity between the Muslims and Hindus:

### Exhib P—3

Para 2 : It is clearly stated that "the Muslims did not believe in nationalism it believed in Islam the love for country was not above Islam but it came after it"

Para 3 : "S.O.R. Ilias exhorted the Muslims not to keep silence as the J&K was a test case for the Muslims."

Para 4 : "JEIH should organise seminar and symposia throughout the country to make a wind favouring independence of Kashmir."

Para 5 : "During Ramazan Month due to continued curfew the people had to live on chewing grasses and the repression of Jagmohan pushed behind all the excesses committed by Hitler, Napoleon, Stalin, Lenin etc."

Para 6 : "He exhorted the Muslims touching their Islamic sentiments several times to rise against the discrimination against the Muslims untidily."

It further says that he said during the mourners procession taken out with the Janaza of maulvi Farooq the procession was dispersed by indiscriminate firing, no one was allowed to participate in the burial the feet of the Muslims carrying the coffin were chopped off by the security forces. This propaganda had a very serious impact on the listeners (At that time there was a curfew in Srinagar because of apprehended violence in funeral procession).

Para 7 : "Sirajul Hassan Ameer Jeih endorsed the speech of S.O.R. Ilias regarding the situation in Kashmir and he averred that Kashmir cannot be kept in India and no one could stop its separation from India."

Para 10 : "Answering a question about the possible adverse fall out of the secession of Kashmir upon Indian Muslims Sirajul Hassan retorted that the life and property of the Muslims in India were not safe without that also what more could happen to them ?"

Para 14 : "The slain Vice Chancellor of Kashmir University was a 'Qafir' as he had prepared the material against Muslims personal law and they expressed happiness over his murder."

The above statements clearly constitute unlawful activity within the meaning of section 2(f) & (g) of the Act and constitute offences under Section 153-A (a) and (b) 153-B (a), (b) and (c) of the I P C.

These statements are intended to support the claim to bring about the secession of the part of territory of India (Kashmir). This also incites the Mohammdans to bring about cession or secession of Kashmir. The statements also disclaim question, disrupt

or in any case are intended to disrupt the sovereignty and territorial integrity of India.

The statements promote or at any rate attempt to promote on grounds of religion disharmony and feelings of enmity between the Muslims and the Hindus and also are prejudicial to the maintenance of harmony between different religious groups. They can disturb or are likely to disturb the public tranquility which is an offence within the meaning of Section 153-A (a) and (b) of the I.P.C. In the same manner the imputations are offences within the meaning of section 153-A and 153-B (a), (b) and (c) of the I.P.C.

Learned counsel Mr. Soli J. Sorabji appearing for the JEIH vehemently contended that the grounds narrated in the notification dated 10-12-1992 lack proximity in time between the grounds alleged and its action taken i.e. in short to say that in the notification instances of 27th May, 1990 and 1-8-1991 have been mentioned but the action is being taken on 10-12-1992 under the provisions of the Act. This position has been clarified by Shri N. C. Padhi in his affidavit itself stating that by collecting necessary information through I. B. agencies the JEIH had been kept under observation about unlawful activities of its members and office bearers and considering those activities the JEIH was regarded as a communal organisation and thus was being dealt with under normal laws of the land but the moment Babri Masjid incident took place on 6-12-1992 and the country started facing with worst communal riots for which instances of death tolls have also been given the Union of India thought it fit to deal with this association JEIH with special provisions of law and therefore action under the Act was initiated by issuing the notification dated 10-12-1992. Having regard to the instances narrated in the affidavit of Sri N. C. Padhi and its Annexures in the opinion of this Tribunal the submission of the learned counsel that there is no proximity in time between the grounds alleged and the action taken is of no avail and the nexus between the two has amply been established by the Union of India beyond reasonable doubt as is apparent from the record.

During the course of his submissions Mr. Soli J. Sorabji also argued about infringement of the right to speech and expression which are guaranteed under Article 19 of the Constitution of India. According to the learned counsel whatever grounds have been alleged against the JEIH or statements attributed to its office bearers or members the same may be their individual opinion and since the JEIH is an organisation having many members, different views are bound to be there on a particular subject, therefore, assuming though not admitting that one or two members of JEIH made any such statement as alleged by the Government, the JEIH as a whole is not liable to be declared as an unlawful organisation under the provisions of the Act depriving it from its fundamental right to speech and expression.

The submission made by the learned counsel is devoid of substance on both counts i.e. considering the factual aspect as well as legal position in relation to fundamental rights guaranteed under Article 19

of the Constitution of India. As far as first part of the argument is concerned nothing has been brought on record or suggested that against the members of JEIH who are alleged to have delivered inflammatory and anti national speeches in the course of meetings held on 27-5-1990 at Delhi and 1-8-1991 at Malarkotla (Sangroor) the association JEIH had ever taken any action dis-membering them from the association. Here the Tribunal may observe that not only the members of the association but its top office-bearers like President, Secretary, Treasurer etc. whose presence is admitted by the JEIH participated and expressed their views in those meetings. Thus it cannot be said that the views expressed by those office-bearers are in their individual capacity but the law safely presumes that the statements delivered by these important office bearers of the JEIH was the opinion of the organisation JEIH and hence the submission made by the learned counsel in this regard is hereby repelled.

Now coming to the second part of the submission relating to the fundamental rights guaranteed under Article 19 (1), (a), (b), (c), it was argued that the JEIH has been given liberty to freedom of speech and expression to assemble peacefully without arms or to form association or union and therefore imposing restriction contemplated under section 3 of the Act would amount to infringement of fundamental rights.

This argument advanced by Mr. Soli J. Sorabji has also no force in as much as none of the fundamental rights guaranteed under this Article is an absolute right. Each of the sub-clauses (a) (b) (c) in clause (1) of Article 19 of the Constitution of India is saddled with the restrictive provisions enacted in clauses (2), (3) and (4) of this Article 19. Hence in determining the extent of a right guaranteed in any of the sub-clauses of clause (1) particular sub-clause must be taken alongwith the corresponding provisions in clauses (2), (3) and (4) of this Article 19. In this regard it may also be observed that the importance on freedom of speech and expression guaranteed by this Article cannot be over estimated because it lies at the foundation of all democratic Governments.

At this stage, it would be appropriate to note here that in *M/s. Laxmi Khandhari Vs. State of U.P.* (AIR 1981 SC 873) and other long line decisions of the Apex Court it is well settled that :

"It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to the reasonable restrictions which may be imposed by the State in public interest under clauses (2) to (6) of Article 19. As to what are the reasonable restrictions naturally depend on the nature and circumstances of the case character of the statute object which it seeks to serve existing circumstances extent of evils sought to be remedied as also nature of restrain or restrictions placed on the rights of the citizen."

This being the legal position indeed reasonable restrictions in exercise of the fundamental rights



under clauses (a), (b) and (c) can certainly be imposed under sub-clauses (2), (3) and (4) of this Article 19 by the State and that is why Unlawful Activities Prevention Act, 1967 is enacted for this very purpose covering clauses (2) to (4) of the Article that if any person either in his individual capacity or in its organisational capacity (in the instant case the JEIH) is found crossing the limits imposed by the Article itself the same can be covered and brought within the purview of the Act and be dealt with accordingly. Therefore the submission of the learned counsel in this regard is also of no help to him.

Mr. Soli J. Sorabji learned counsel for JEIH, though not elaborately but in brief tried to throw light on Secularism contending that the India being a Secular country its citizens have every right to propagate their religion. Any curtailment in the right of religion further amounts to infringement of fundamental rights guaranteed under Article 25 and 26 of the Constitution of India.

The submission has no two opinion. No doubt secularism is an essence of our democratic system but under the garb of secularism or taking advantage of Article 19(1) (a) (b) (c) no one is permitted to jeopardise and endanger the integrity sovereignty and security of India by expressing antinational views as is alleged by the Government against the JEIH.

At this stage, it is useful to refer the statement of great Philosopher Dr. Radhakrishnan which has been quoted by Hon'ble Mr. Justice A. M. Ahmadi in a recent celebrated judgment in *S.R. Bommai & others Vs. Union of India & others* JT 1994 (2) SC 215 :

"When India is said to be a secular State it does not mean that we reject reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that Secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition the Indian State will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government. This view of religious impartiality of comprehension and forbearance has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all like should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of Church and State."

Thus, under the garb of Article 25 & 26 of the Constitution of India i.e. the right to freedom of

religion no individual or association here in the instant case the JEIH be permitted to use it for anti national activities taking shelter of Article 19(I) (a) (b) & (c) of the Constitution of India.

Mr. Soli J. Sorabji, learned counsel appearing for JEIH while strongly relying on the dictum laid down in *Kedarnath Vs. State of Bihar* (A.I.R 1962 SC 955) contended that provisions of section 2(f) & (g) of the Act should not be literally construed but should be construed in such a manner that an element of incitement or violence should be read into the provisions.

Here it may be observed that in that case Hon'ble the Supreme Court while considering the constitutional validity of Section 124 A of the IPC held Section 124-A to be constitutional after considering pros and cons of the said provision.

It may also be observed here that where the Tribunal is creature of a statute it has got no jurisdiction to go through the constitutional validity or vires of any provision of law. It is only within the ambit of Article 226 of the Constitution of India to consider the same. This Tribunal has already discussed this aspect here-in before and thus no useful purpose would be served in repeating the same argument time and again.

However, since much emphasis was given to *Kedarnath's* case (supra) by Mr. Soli J. Sorabji it is appropriate to deal with the provisions of section 124A IPC little more. Section 124A IPC deals with the offence against the Government established by law whereas Section 2(f) & 2(g) of the Act deals with the sovereignty and territorial integrity of India. In a democratic system one may certainly challenge and criticise the view and policies of the Government, but nobody can be permitted to question and challenge sovereignty and territorial integrity of India. The preamble of Unlawful Activities Prevention Act 1967, if gone into it makes it clear that the Act was enacted only with a view to deal with the activities directed against integrity and sovereignty of India. Thus the submission made by Sri Soli J. Sorabji in this regard is of no avail.

In AIR 1962 SC page 955, one Mr Kedarnath had made a speech the charges of which are reproduced in the charge sheet in paragraph 2 of the judgment. He was convicted by the trial court, the appeal was dismissed and the Supreme Court also dismissed the SLP though it decided the constitutional question. In that case the question related to the criticism of the Government and its policy. Here the matter pertains to sovereignty and integrity of India.

Lastly Mr Soli J. Sorabji contended that since first two grounds mentioned in the notification in question have already been held to be obviously stale by the apex Court in Writ Petition No. 40 of 1993 and Civil Appeal No. 1736 of 1993 hence there was no sufficient material before the Central Government constituting basis for forming opinion to declare the JEIH unlawful association.

Suffice it to say, no doubt their Lordships of the apex Court observed that first two grounds are obviously stale. But here it has to be kept in mind that the challenge in aforesaid writ petition and civil appeal was restricted to the exercise of the powers under the proviso to sub-section (3) of Section 3, therefore, those grounds may be stale for the purposes of exercising powers under the proviso to sub-section (3) of Section 3 i.e. for the immediacy of the ban but by virtue of that itself those grounds cannot be stale for the purposes of exercising powers under sub-section (1) of Section 3.

Thus in the considered opinion of the Tribunal first two grounds are not stale as alleged, for the exercise of powers under sub-section (1) of Section 3 of the Act and there was sufficient material before the Central Government to form the opinion that circumstances exist which render it necessary for the Government to declare the JEIH to be unlawful association and there were sufficient reasons for such declaration.

Besides this the apex Court itself vide its final order dated 18-3-1994 in aforesaid case held as under :

“We express no opinion on the validity of the rest of the notification which is the subject matter of adjudication before the Tribunal.”

Thus the submission of learned counsel for JEIH is repelled accordingly.

Before concluding the enquiry it would not be out of place to mention here that since categorical findings have already been recorded by the Tribunal at appropriate places above while discussing the oral and documentary evidence adduced by the respective parties and while considering the rival contentions raised by the learned for the parties hence no useful purpose would be served by repeating the same in detail again and again.

Thus concluding the enquiry keeping in mind the aim and object of the Act that it has been enacted for dealing with activities directed against the integrity and sovereignty of India by promoting enmity between different groups on the grounds of religion, race, language, etc and by doing acts prejudicial to maintenance

of harmony and by imputations, assertions, prejudicial to national integrations, considering entire material available on the record including Resume, Exhibits, Annexures, Affidavits and Statements of witnesses produced by the parties and considering the arguments advanced by the learned counsel for the parties this Tribunal finds in the enquiry that the Union of India proved beyond reasonable doubt that Sri Sirajul Hasan, Amir of JEIH declared in the meeting held at Delhi on 27-5-1990 that separation of Kashmir from India was inevitable and that Sri Abdul Aziz Naib Amir of JEIH observed in the meeting held at Malerkotla on 1-8-1991 that the Government of India should hold plebiscite on Kashmir and that the JEIH has been disclaiming and questioning the sovereignty and territorial integrity of India.

Therefore, in view of the premises aforesaid the Tribunal decides that there is sufficient cause for declaring the JEIH to be unlawful association and accordingly in exercise of powers conferred by sub-section 3 of Section 4 of the Act this Tribunal hereby confirms the Notification No. S.O. 898 (E) dated 10-12-1992 referred to it except the part of the Notification which has been struck down by the Supreme Court of India. The consequences would follow in accordance with the law

(Sd./)

(B. M. LAL)

CHAIRMAN

UNLAWFUL ACTIVITIES  
(PREVENTION) TRIBUNAL

NEW DELHI

Dated : April 11th 1994

Certified to be true copy

(Sd.) S. B. VOHRA,

Registrar 11-4-1994

The Unlawful Activities  
(Prevention) Tribunal,

Re. : J.E.I.H.

Room No. 106 High Court of Delhi

New Delhi.